

## ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE adopting a new Chapter 5.15 of the Lincoln Municipal Code,  
2 Cable Communications, to incorporate the cable communications regulations currently found in  
3 Chapter 5.16 of the Lincoln Municipal Code as updated to be in conformance with federal law and  
4 to coordinate the regulations with the newly negotiated cable television franchise, and repealing  
5 current Chapter 5.16 in its entirety.

6 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

7 Section 1. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
8 section numbered 5.15.010 to read as follows:

9 **5.15.010 Title.**

10 This chapter shall be known as the Cable Communications Ordinance.

11 Section 2. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
12 section numbered 5.15.020 to read as follows:

13 **5.15.020 Purpose.**

14 The general purposes of this ordinance are to:

15 (a) Provide for the franchising and regulation of cable systems and open video systems  
16 within the City of Lincoln;

17 (b) Provide a legal framework for the deployment of cable systems and open video  
18 systems that meet the current needs of the City and that can be improved and upgraded to meet  
19 future needs;

20 (c) Provide for the payment of fees and other valuable consideration to the City for the  
21 use of the public ways and for the privilege to construct and operate cable systems and open video  
22 systems;

23 (d) Provide for the regulation by the City of certain rates to be charged to subscribers for  
24 certain cable services;

1           (e)     Provide for the development of cable systems and open video systems as a means to  
2 improve communication between and among the members of the public and public institutions of  
3 the City; and

4           (f)     Provide remedies and prescribe sanctions for violation of this ordinance and any  
5 franchise granted hereunder.

6                     Section 3. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
7 section numbered 5.15.030 to read as follows:

8     **5.15.030       Applicability.**

9           This ordinance is applicable to any application for a cable system franchise or an open video  
10 system franchise filed on or after the effective date of this ordinance and to any such franchises  
11 granted thereafter. Any franchise granted prior to the effective date of this ordinance shall be subject  
12 to the provisions of this chapter, as they may be amended from time to time. A cable system operator  
13 must obtain a franchise prior to constructing a cable system or providing cable service within the  
14 City. An operator of an open video system must obtain a franchise before constructing an open  
15 video system or providing cable services within the City.

16                    Section 4. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
17 section numbered 5.15.040 to read as follows:

18     **5.15.040       Definitions.**

19           For the purposes of this ordinance, the following terms, phrases, words, and their derivations  
20 shall have the following meanings. Unless otherwise expressly stated, words not defined herein shall  
21 be given the meaning set forth in Title 47 of the United States Code, as amended, and, if not defined  
22 therein, words shall be given their common and ordinary meaning.

23           **Access channel** shall mean any channel set aside, free of charge to the user, by a grantee and  
24 designated by the City for noncommercial governmental, public or educational access purposes to  
25 transmit governmental, public or educational access programming or services.

26           **Affiliate** shall mean any person or entity who (directly or indirectly) owns or controls, is  
27 owned or controlled by, or is under common ownership or control with, a grantee.

1       **Application** shall mean a proposal seeking authority to construct and/or operate a  
2 communications facility within the City pursuant to this ordinance. It shall include the initial  
3 proposal plus all related subsequent amendments and correspondence with the City.

4       **Basic service** shall mean any service tier which includes, at a minimum, the retransmission  
5 of local television broadcast signals and access channel programming.

6       **Cable Act** means the Cable Communications Policy Act of 1984, and the Cable Television  
7 Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of  
8 1996, regulations promulgated pursuant to such Acts, and any amendments or future federal cable  
9 television laws, acts or regulations.

10       **Cable service** shall mean (1) the one-way transmission to Subscribers of video programming  
11 or other programming services; and (2) Subscriber interaction, if any, which is required for the  
12 selection or use of such video programming or other programming services.

13       **Cable system** shall mean a facility consisting of a set of closed transmission paths and  
14 associated signal generation, reception and control equipment that is designed to provide Cable  
15 Service and which is provided to multiple subscribers within the community, but such term does not  
16 include (1) a facility that serves only to retransmit the television signals of one or more television  
17 broadcast stations; (2) a facility that serves subscribers without using any public way; (3) a facility  
18 of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Federal  
19 Communications Act (47 U.S.C. §201 et seq.), except that such facility shall be considered a Cable  
20 System (other than for purposes of Section 621(c) (47 U.S.C. §541(c)) to the extent such facility is  
21 used in the transmission of video programming directly to subscribers, unless the extent of such use  
22 is solely to provide interactive on demand services; (4) an open video system that complies with  
23 federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility  
24 systems. The foregoing definition of “cable system” shall not be deemed to circumscribe or limit  
25 the authority of the City to regulate or franchise the activities of any other communications system  
26 or provider of communications services to the full extent permitted by law.

1        **Channel** shall mean a band of frequencies in the electromagnetic frequency spectrum, which  
2        is capable of carrying one audio-visual television signal.

3        **City** shall mean the City of Lincoln, Nebraska, a municipal corporation, and any agency,  
4        office or department thereof. Nebraska or its lawfully appointed designee(s) or successors.

5        **City Code** shall mean the Lincoln Municipal Code, as amended from time to time.

6        **City Council** shall mean the City Council of the City of Lincoln.

7        **Communications Facility** shall mean a cable system, a system using internet protocol  
8        ("IP") technology to deliver Video Programming and/or an open video system, as appropriate.

9        **Connection** shall mean the attachment of a Drop or other facility to a Subscriber's television  
10       receiver/monitor or other communications or computer device.

11       **Converter** shall mean an electronic device (sometimes referred to as a receiver or set-top  
12       device) which may serve as an interface between a Communications Facility and a subscriber's  
13       television monitor/receiver, and which may convert signals to a frequency or format acceptable to  
14       a television monitor/receiver of a subscriber and may, by an appropriate selector, permit a subscriber  
15       to view all signals of a particular service or program.

16       **Drop** shall mean the cable that connects the ground block on a Subscriber's premises to the  
17       nearest feeder cable of a communications facility or an institutional network.

18       **Equitable price** shall mean fair market value adjusted downward for any economic harm  
19       or property damage sustained by the City or subscribers as a result of a franchisee's breach of its  
20       franchise or violation of this chapter, and as further adjusted to account for other equitable factors  
21       that may lawfully be considered by the City.

22       **Fair market value** shall mean the price for a cable system valued as a going concern, but  
23       with no value allocated to the franchise itself.

24       **FCC** shall mean the Federal Communications Commission, its designee, or any legally  
25       appointed or designated agent or successor.

26       **File** shall mean the actual delivery, by mail or otherwise, to the appropriate office, officer  
27       or agent of the City of any document or other thing which this chapter or a franchise requires a

1 franchisee to file with the City. The date of receipt by the City shall be considered the filing date for  
2 purposes of any deadline prescribed in this Chapter or in a franchise or for the computation of time  
3 for the performance or doing of any act, duty or matter required under this chapter or a franchise and  
4 a period of time from the filing date which is fixed for such act, duty or matter. Unless specified to  
5 the contrary, the filing shall be with the office of the telecommunications officer or the City Clerk.

6 **Franchise** shall mean a nonexclusive authorization pursuant to a contractual agreement  
7 executed by the City and a franchisee to construct, maintain, and operate a Communications Facility  
8 within the public ways within the City. Any such authorization shall not mean or include any license  
9 or permit required for the privilege of transacting and carrying on a business in the City as required  
10 by State or City laws, ordinances or regulations, or for attaching devices to poles or other structures,  
11 whether owned by the City or a private entity, or for excavating or performing other work in or  
12 along public ways.

13 **Franchise Area** shall mean the area within the jurisdictional boundaries of the City,  
14 including any areas annexed by the City.

15 **Franchisee or grantee** refers to any person or entity that has been granted a franchise by the  
16 City in accordance with the provisions of applicable law, including any lawful successor, transferee,  
17 or assignee thereto.

18 **Gross revenues** shall be as defined pursuant to a franchise agreement between the  
19 Franchisee and the City

20 **Installation** shall mean the connection of a Communications Facility to a subscriber's  
21 television receiver/monitor or other subscriber-owned or provided end-user equipment.

22 **Leased channel or leased access channel** shall mean any channel which is designated or  
23 dedicated for use by a person or entity unaffiliated with Grantee pursuant to 47 U.S.C. §532.

24 **Noncommercial** shall mean, in the context of access channels, that particular products and  
25 services are not promoted or sold, This term shall not be interpreted to prohibit an access channel  
26 operator or programmer from soliciting and receiving financial support to produce and transmit  
27 video programming on an access channel, or from acknowledging a contribution or from

1 cablecasting spots to promote public or governmental announcements for services or programs that  
2 do not compete with services or programs offered by a Grantee.

3 **Open video system** shall mean a set of transmission paths and associated signal generation,  
4 reception and control equipment designed to provide cable service, which includes video  
5 programming, which is provided to multiple subscribers within a community, and which the Federal  
6 Communications Commission or its successor has certified as compliant with Part 76 of the Code  
7 of Federal Regulations, 47 C.F.R. Part 76, as amended from time to time. The foregoing definition  
8 of “open video system” shall not be deemed to circumscribe or limit the authority of the City to  
9 regulate or franchise the activities of any other communications system or provider of communi-  
10 cations services to the full extent permitted by law. Any franchise issued to a grantee shall define  
11 the services which the grantee is authorized to provide using the public ways.

12 **Premium service** shall mean programming choices (such as movie channels or pay-per-view  
13 programs) offered to Subscribers on a per-channel, per-program or per-event basis.

14 **School** means any state accredited educational institution (both public and private) including,  
15 for example, primary and secondary schools, but excluding colleges, universities and home schools.

16 **Service tier** shall mean a specific set of subscriber services or channels which are made  
17 available as, and only as, a group for purchase by subscribers at a specified rate for the group.

18 **State** shall mean the State of Nebraska, its agencies, offices, commissions and departments.

19 **Street or public way** shall mean the surface of and space above and below any public  
20 streets, highways, avenues, roads, boulevards, drives, alleys, easements, sidewalks, concourses,  
21 tunnels, viaducts, or bridges in which the City now or hereafter holds any interest as an owner or  
22 trustee for the public, which, consistent with the purposes for which it was created, obtained or  
23 dedicated, may be used for the purpose of installing, operating and maintaining a communications  
24 facility; provided, however, that public ways shall not include other public property for which a  
25 separate authorization and agreement to utilize any part of same shall be required from the City.

26 **Subscriber or customer** shall mean any person or entity who or which elects to subscribe  
27 to, for any purpose, cable services provided by a grantee by means of or in connection with a

1 Communications Facility and whose premises are physically wired and lawfully activated to receive  
2 cable services from the grantee's Communications Facility. In the case of multiple office buildings  
3 or multiple dwelling units, the term "subscriber" or "customer" means the lessee, tenant or occupant  
4 except for those Persons in or covered by a bulk account.

5 **Transfer** shall mean any transaction in which (i) there is any change, acquisition or direct  
6 or indirect transfer or assignment of control of a franchisee, its communications system or any  
7 person or entity that is an operator of the communications facility; or (ii) the rights or obligations  
8 held by a franchisee under a franchise are transferred, sold, assigned or leased, in whole or in part,  
9 directly or indirectly, to another person or entity. The term "control," as used in this definition,  
10 means working control, in whatever manner exercised.

11 **User** shall mean a person, organization or other entity using a channel, equipment, or  
12 production/editing facilities for purposes of producing or transmitting signals.

13 Section 5. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
14 section numbered 5.15.050 to read as follows:

15 **5.15.050 Requirement of a Franchise.**

16 (a) It shall be unlawful to construct, install, maintain, or operate a Communications  
17 Facility within the City or to provide cable service in the City without a valid franchise obtained  
18 pursuant to the provisions of this chapter. Conversion of a franchised cable system to an open video  
19 system in accordance with applicable FCC regulations shall not alter or in any way limit the terms  
20 or enforceability of the franchise granted by the City and the franchise agreement executed by the  
21 City and the franchisee.

22 (b) Any person or entity occupying the public ways of the City for the purpose of  
23 operating or constructing a Communications Facility, which person or entity does not hold a valid  
24 franchise from the City, shall be subject to all provisions of this chapter, to the extent permitted by  
25 law. The City at any time: (i) may require such person or entity to obtain a franchise within thirty  
26 (30) days of receipt of a written notice from the City that a franchise is required; (ii) require such  
27 person or entity to remove its property from the public ways and, at such person's or entity's sole

1 expense, restore the area to a condition satisfactory to the City within a reasonable period of time  
2 as the City shall determine; (iii) remove the property itself and restore the area to a satisfactory  
3 condition and charge the person or entity the costs therefore; and/or (iv) take any other action  
4 permitted by law, including, but not limited to, filing for and seeking damages for trespass. In no  
5 event shall a franchise be created unless it is issued by action of the City Council and the franchise  
6 terms are set forth in a franchise agreement.

7 (c) Any act that a franchisee is or may be required to perform under this chapter, a  
8 franchise or applicable law or regulations shall be performed at the franchisee's expense, unless  
9 expressly provided to the contrary in this chapter, a franchise or applicable law. Nothing in this  
10 paragraph (c) shall prohibit a franchisee from passing those expenses through and recovering such  
11 expenses from the franchisee's subscribers, to the extent permitted by applicable law.

12 Section 6. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
13 section numbered 5.15.060 to read as follows:

14 **5.15.060 General Franchise Characteristics.**

15 Any franchise issued pursuant to the provisions of this chapter shall be deemed to:

16 (a) Authorize use of the public ways for installing cables, wires, lines, and other facilities  
17 necessary and appurtenant to the operation of a Communications Facility within a franchise area,  
18 but shall neither expressly nor impliedly be deemed to authorize a grantee to provide service to, or  
19 install a Communications Facility and related equipment on, private property without owner consent  
20 (except to the extent permitted by Section 621(a)(2) of the Cable Act, 47 U.S.C. §541(a)(2)), or to  
21 utilize publicly- or privately-owned utility poles or conduits without a separate agreement with the  
22 owners thereof;

23 (b) Be nonexclusive, and shall neither expressly nor impliedly be deemed to preclude  
24 the issuance of subsequent franchises to operate one or more other Communications Facilities within  
25 the City; and shall not affect the City's right to authorize the use of public ways as the City deems  
26 appropriate;



1           (c)     Constitute a right to operate a Communications Facility regulated by the provisions  
2 of this chapter and a franchise;

3           (d)     Be subordinate to, without limitation, the City's use and any prior lawful occupancy  
4 of the public ways;

5           (e)     Be subject to the City's right to reasonably designate where a franchisee's facilities  
6 are to be placed within the public ways and to resolve any disputes among users of the public ways  
7 on a non-discriminatory basis; and

8           (f)     Convey no property right to a franchisee or right to renewal.

9                     Section 7. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
10 section numbered 5.15.070 to read as follows:

11 **5.15.070       Franchise as a Contract.**

12           A franchise issued pursuant to the provisions of this chapter shall be deemed to constitute  
13 a contract between the franchisee and the City. A franchisee shall be deemed to have contractually  
14 committed itself to accept and comply with the terms, conditions, and provisions of the franchise  
15 documents. No franchise shall be deemed to waive or in any other way restrict the City's police  
16 powers or the franchisee's rights under state or federal law.

17                     Section 8. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
18 section numbered 5.15.080 to read as follows:

19 **5.15.080       Conflicts.**

20           (a)     All terms, conditions, and provisions of this chapter and any application for a  
21 franchise shall be deemed to be embodied in a franchise, and conflicts in terms, conditions, or  
22 provisions between these documents shall be resolved as follows:

23                     (1)     The express terms of this chapter shall prevail over conflicting or inconsistent  
24 provisions of the franchise; and

25                     (2)     The express terms of a franchise shall prevail over conflicting or inconsistent  
26 provisions in a franchise application or any requests for proposals; and

1                   (3)     The express terms of any request for proposals shall prevail over conflicting  
2     or inconsistent provisions in the application for the franchise.

3                   (b)     The provisions of a franchise shall be liberally construed in order to effectuate its  
4     purposes and objectives consistent with this chapter and the public interest. In the event one or more  
5     provisions of a franchise or this chapter are subsequently found to be unlawful, null and void or  
6     unenforceable, the City shall consider said provision(s) severed from the franchise so as to continue  
7     the franchise's effectiveness. A franchise agreement shall be construed under the laws of the State  
8     of Nebraska.

9                   Should any provision of a franchise or of this chapter be found unlawful, null, void or  
10     unenforceable, the parties shall negotiate in good faith any replacement provisions to carry out the  
11     full intent and purpose of this agreement.

12                   Section 9. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
13     section numbered 5.15.090 to read as follows:

14     **5.15.090        Company Subject to Police Power.**

15                   (a)     In accepting this Franchise, a grantee acknowledges that its rights hereunder are  
16     subject to the police powers of the City to adopt and enforce general ordinances necessary to the  
17     safety and welfare of the public and it agrees to comply with all applicable general laws and  
18     ordinances enacted by the City pursuant to such power. Any conflicts between the provisions of this  
19     Chapter and any other present or future lawful exercise of the City's police power shall be resolved  
20     in favor of the latter, except that any such exercise that is not of a general application in the  
21     jurisdiction or applies exclusively to grantee which contains provisions inconsistent with this  
22     Agreement shall prevail only if, upon such exercise, the City finds that an emergency exists  
23     constituting a danger to health, safety, property, or general welfare or such exercise is mandated by  
24     law.

25                   (b)     Except for the City's exercise of its police powers, pursuant to this section, the Cable  
26     Communication Ordinance may only be modified or amended with the express written consent of  
27     affected Grantees.

1           Section 10. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
2 section numbered 5.15.100 to read as follows:

3   **5.15.100       Franchise Validity.**

4       A grantee shall agree, by the acceptance of a franchise, to accept the validity of the terms and  
5 conditions of this ordinance and the franchise in their entirety subject to applicable law.

6           Section 11. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
7 section numbered 5.15.110 to read as follows:

8   **5.15.110       Filing of Applications.**

9       (a)   An operator and/or owner of an open video system seeking an initial or renewal  
10 franchise shall file a written application with the City. The application must contain the information  
11 set forth in §5.15.120 of this chapter, and such additional information as the City may from time to  
12 time require.

13       (b)   A person or entity seeking an initial cable system franchise shall file a written  
14 application with the City. The application must contain the information set forth in §5.15.130 of this  
15 chapter, and such additional information as the City may from time to time require.

16       (c)   A franchisee requesting a modification to its franchise shall file a written application  
17 with the City. The application must contain the information set forth in §5.15.140 of this chapter,  
18 and such additional information as the City may from time to time require.

19       (d)   To be considered accepted for filing, a fully completed, signed original application,  
20 in a form prepared by or acceptable to the City, shall be submitted as provided herein together with  
21 six copies. The application shall be accompanied by any required filing fee, shall conform to any  
22 applicable request for proposals and shall contain all information required by the City.

23       (e)   To the extent permitted by law, all applications accepted for filing shall be made  
24 available by the City for public inspection.

25           Section 12. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
26 section numbered 5.15.120 to read as follows:

1     **5.15.120     Content of Applications for an Initial or Renewal Open Video System**  
2     **Franchise.**

3             To be acceptable for filing, an application for an initial or renewal open video system  
4     franchise shall, at a minimum, contain the following information:

5             (a)     The identity of the applicant; the persons or entities who exercise working control  
6     over the applicant; and the persons or entities who control those persons or entities, to the ultimate  
7     parent.

8             (b)     A proposal for construction of the open video system that includes at least the  
9     following: proposed system, including a description of the proposed franchise area's boundaries.

10            (1)     A description of the services that are to be provided over the facility.

11            (2)     The identification of the area of the City to be served by the facility.

12            (3)     The location of the proposed facility and facility design, including a  
13     description of the miles of plant to be installed; a description of the size of equipment cabinets,  
14     shielding and electronics that will be installed along the plant route; a description of the power  
15     sources that will be used; and a description of the noise, exhaust and pollutants, if any, that will be  
16     generated by the operation of the same.

17            (4)     A map of the route the facility will follow; a designation of the portions of  
18     the system that will be placed above-ground and the portions that will be placed underground, and  
19     the construction techniques that the operator proposes to use in installing the system above-ground  
20     and underground; a schedule for construction of the facility, describing when and where construction  
21     will begin, how it will proceed, and when it will be completed; and the expected effect on  
22     right-of-way usage, including information on the ability of the public rights-of-way to accommodate  
23     the proposed system, including, as appropriate given the system proposed, an estimate of the  
24     availability of space in conduits and an estimate of the cost of any necessary rearrangement of  
25     existing facilities. To the extent plans for the facility required under this subsection have not been  
26     completed, an applicant may so state, but (i) the best available equivalent must be provided and (ii)  
27     no construction may begin, even if a franchise issues, until this information has been provided to and

1 approved by the City. Any such grant will be conditional upon receipt and approval of this  
2 information by the City.

3 (5) A description, where appropriate, of how services will be converted from  
4 existing facilities to new facilities, and what will be done with existing facilities.

5 (c) Proof, attested to by a certified public accountant, that the applicant has the financial  
6 resources to complete the proposed project, and to construct, operate, maintain and repair the  
7 proposed facility over the proposed franchise term. Such proof shall include, but not be limited to:

8 (1) a certified statement prepared by a certified public accountant regarding the  
9 applicant's financial ability to complete the construction proposed, to meet the time frame proposed  
10 and to operate the open video system proposed. If an applicant is a joint venture or partnership, the  
11 same information shall be provided for each participant in the joint venture or partnership;

12 (2) pro forma financial projections for the proposed franchise term, including a  
13 statement of projected income and a schedule of planned capital additions, with all significant  
14 assumptions explained in notes or supporting schedules; and

15 (3) the applicant's proposed rate structure, including prospective charges for  
16 service, installation, converters and all other proposed equipment for the ensuing five years.

17 (d) Proof that an applicant is technically qualified to construct, operate, maintain and  
18 repair the proposed facility. At a minimum, the applicant must show that it has the experience or  
19 resources to ensure that work is to be performed adequately, and can respond to emergencies during  
20 and after construction is complete.

21 (e) Proof that the applicant is legally qualified, which proof must include a demonstration  
22 that the applicant:

23 (1) has received, or is in a position to receive, necessary authorizations from state  
24 and federal authorities;

25 (2) has not engaged in conduct (fraud, racketeering, violation of antitrust laws,  
26 consumer protection laws, or similar laws) that allows the City to conclude the applicant cannot be

1 relied upon to comply with the requirements of a franchise, or the provisions of this chapter and  
2 other applicable laws, regulations and requirements; and

3 (3) is willing to enter into a franchise, to pay required compensation and to abide  
4 by the provisions of applicable law, including those relating to the construction, operation or  
5 maintenance of its facilities, and has not entered into any agreement that would prevent it from doing  
6 so.

7 (f) A demonstration of how the applicant will match the most favorable access channel  
8 capacity and support obligations agreed to by a franchised cable system operator in the City or, if  
9 there is no cable system operator in the City, how the applicant will provide the highest amount of  
10 access channel capacity and support permitted by law.

11 (g) To the extent an applicant is in any respect relying on the financial or technical  
12 resources of another person or entity, including another affiliate, the proofs required under  
13 §5.15.120(c) - (d) should be provided for that person or entity.

14 (h) A description of the applicant's prior experience in Communications Facility  
15 ownership, construction and operation, and an identification of cities and counties in Nebraska in  
16 which the applicant or any of its principals have a franchise or any interest therein, including the  
17 name, address and phone number of each local franchising authority and references from each  
18 authority. If an applicant has no other franchise in Nebraska, it shall provide the information for its  
19 operations in other states.

20 (i) Copies of any agreements which an applicant has entered into or proposes to enter  
21 into with any other person or entity relating to the open video system.

22 (j) If the applicant proposes to provide cable service to an area already served by a  
23 Communications Facility, a written description and detailed map of the area where the overbuild  
24 would occur and the ability of the public ways and other property that would be used by the  
25 applicant to accommodate the open video system.

26 (k) Any additional information that the City or the City Council may request of the  
27 applicant that is relevant to the City's consideration of the application.

1           (l) An affidavit or declaration of the applicant or authorized officer thereof certifying  
2 the truth and accuracy of the information in the application, and certifying that the application meets  
3 all requirements of applicable law.

4           (m) A declaration that the applicant agrees to comply with this chapter and will abide by  
5 the City Council's decision to grant or deny an open video system franchise.

6           (n) An applicant may show that it would be inappropriate to deny it a franchise under  
7 § 5.15.120(e)(2), by virtue of: the particular circumstances surrounding the acts or omissions at  
8 issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their  
9 recurrence; and the lack of involvement of the applicant's principals, or the remoteness of the acts  
10 or omissions from the operation of telecommunications facilities.

11           Section 13. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
12 section numbered 5.15.130 to read as follows:

13 **5.15.130 Applications for Grant of an Initial Cable System Franchise; Contents of**  
14 **Applications for An Initial Cable System Franchise.**

15           (a) A person or entity may apply for an initial cable system franchise by submitting an  
16 application containing the information required in §5.15.130(d) to the City. Upon receipt of such  
17 an application, the City may either (i) evaluate the application pursuant to §5.15.170, conducting  
18 such investigations it deems necessary; or (ii) issue a Request for Proposals ("RFP"), after  
19 conducting, if necessary, a proceeding to identify the future cable-related needs and interests of the  
20 community. Any such RFP shall be mailed to any person or entity requesting its issuance and shall  
21 be made available to any other interested person or entity.

22           (b) An applicant shall respond to an RFP by filing a proposal with the City within the  
23 time directed by the City, providing the information and material set forth in §5.15.130(d). The  
24 procedures, instructions and requirements set forth in the RFP shall be followed by each applicant.  
25 Any applicant that has already filed materials pursuant to §5.15.130(a) herein need not refile the  
26 same materials with its proposal, but shall clearly identify each portion of the previously filed  
27 materials that are intended to satisfy the RFP requirements. The applicant shall further amplify its

1 application to include any additional or different materials required by the RFP. The City may seek  
2 additional information from any applicant and establish deadlines for the submission of such  
3 information.

4 (c) Notwithstanding the provisions of §5.15.130(a) and 5.15.130(b), a person or entity  
5 may apply for an initial cable system franchise by submitting an unsolicited application containing  
6 the information required in §5.15.130(d) and requesting an evaluation of that application pursuant  
7 to §5.15.170. Prior to evaluating that application, the City may conduct, or cause to be conducted,  
8 such investigations as are necessary to determine whether the application satisfies the standards set  
9 forth in §5.15.170 and may seek additional applications by RFP or otherwise.

10 (d) An RFP for the grant of an initial cable system franchise shall require, and any such  
11 application shall contain, at a minimum, the following information:

12 (1) The identity of the applicant; the persons and/or entities who exercise working  
13 control over the applicant; and the persons and/or entities who control those persons and/or entities,  
14 to the ultimate parent.

15 (2) An identification of the area of the City to be served by the proposed cable  
16 system, including a description of the proposed franchise area's boundaries.

17 (3) A detailed description of the physical facilities proposed, which shall include  
18 at least the following:

19 (i) A description of the channel capacity, technical design, performance  
20 characteristics, headend, access (and institutional network) facilities and equipment;

21 (ii) The location of the proposed facility and facility design, including a  
22 description of the miles of plant to be installed, and a description of the size of equipment cabinets,  
23 shielding and electronics that will be installed along the plant route, the power sources that will be  
24 used and a description of the noise, exhaust and pollutants, if any, that will be generated by the  
25 operation of the same;

26 (iii) A map of the route the facility will follow; a designation of the  
27 portions of the system that will be placed above-ground and the portions that will be placed



1 underground, and the construction techniques that the operator proposes to use in installing the  
2 system above-ground and underground; a schedule for construction of the facility, describing when  
3 and where construction will begin, how it will proceed, and when it will be completed; and the  
4 expected effect on right-of-way usage, including information on the ability of the public  
5 rights-of-way to accommodate the proposed system, including, as appropriate given the system  
6 proposed, an estimate of the availability of space in conduits and an estimate of the cost of any  
7 necessary rearrangement of existing facilities; and

8 (iv) A description, where appropriate, of how services will be converted  
9 from existing facilities to new facilities, and what will be done with existing facilities.

10 (4) A demonstration of how the applicant will reasonably meet the future  
11 cable-related needs and interests of the community, including descriptions of the capacity, facilities  
12 and support for public, educational, and governmental use of the cable system (including  
13 institutional networks) the applicant proposes to provide and why applicant believes that the  
14 proposal is adequate to meet the future cable-related needs and interests of the community.

15 (5) A demonstration of the financial qualifications of the applicant, including at  
16 least the following:

17 (i) A certified statement prepared by a certified public accountant  
18 regarding the applicant's financial ability to complete the construction proposed, to meet the time  
19 frame proposed and to operate the cable system proposed. If an applicant is a joint venture or  
20 partnership, the same information shall be provided for each participant in the joint venture or  
21 partnership;

22 (ii) Pro forma financial projections for the proposed franchise term,  
23 including a statement of projected income, and a schedule of planned capital additions, with all  
24 significant assumptions explained in notes or supporting schedules; and

25 (iii) The applicant's proposed rate structure, including projected charges  
26 for each service tier, installation, converters and all other proposed equipment or services for the  
27 ensuing five years.

1           (6) A demonstration of the applicant's technical ability to construct and/or  
2 operate the proposed cable system, including identification of key personnel.

3           (7) Proof that the applicant is legally qualified, which proof must include a  
4 demonstration that the applicant:

5                   (i) has received, or is in a position to receive, necessary authorizations  
6 from state and federal authorities;

7                   (ii) has not engaged in conduct (fraud, racketeering, violation of antitrust  
8 laws, consumer protection laws, or similar laws) that allows the City to conclude the applicant  
9 cannot be relied upon to comply with requirements of the franchise, or provisions of this Chapter;

10                   (iii) has not had any cable television franchise revoked by any franchising  
11 authority within three (3) years preceding the date of the submission of the application;

12                   (iv) is willing to enter into a franchise, to pay required compensation and  
13 to abide by the provisions of applicable law, including those relating to the construction, operation  
14 or repair of its facilities; and has not entered into any agreement that would prevent it from doing  
15 so; and

16                   (v) has not submitted an application for an initial or renewal franchise to  
17 the City, which was denied on the ground that the applicant failed to propose a cable system meeting  
18 the cable-related needs and interests of the community, or as to which any challenges to such  
19 franchising decision were finally resolved (including any appeals) adversely to the applicant, within  
20 three (3) years preceding the submission of the application.

21           An applicant may show that it would be inappropriate to deny it a franchise under  
22 § 5.15.130(d)(7)(ii) by virtue of: the particular circumstances surrounding the acts or omissions at  
23 issue; the steps taken by the applicant to cure all harms flowing therefrom and to prevent their  
24 recurrence; and the lack of involvement of the applicant's principals, or the remoteness of the acts  
25 or omissions from the operation of communications facilities. Notwithstanding anything to the  
26 contrary herein, an applicant shall not be issued a cable system franchise if it files materially

1 misleading information in its application or intentionally withholds information that the applicant  
2 is lawfully required to provide.

3 (8) To the extent that the applicant is in any respect relying on the financial or  
4 technical resources of another person or entity, including another affiliate, the proofs required under  
5 §§5.15.130(d)(5) - 5.15.130(d)(6) should be provided for that person.

6 (9) A description of the applicant's prior experience in cable system ownership,  
7 construction, and operation, and an identification of cities and counties in Nebraska in which the  
8 applicant or any of its principals have a cable system franchise or any interest therein, including the  
9 name, address and phone number of each local franchising authority and references from each  
10 authority. If an applicant has no other cable system franchise in Nebraska, it shall provide the  
11 information for its operations in other states.

12 (10) Copies of any agreements which an applicant has entered into or proposes to  
13 enter into with any other person or entity relating to the proposed cable system.

14 (11) If the applicant proposes to provide cable service to an area already served  
15 by an existing Communications Facility, a written description and detailed map of the area where  
16 the overbuild would occur and the ability of the public ways and other property that would be used  
17 by the applicant to accommodate an additional cable system.

18 (12) Any other information that the City determines is reasonably necessary to  
19 demonstrate compliance by the applicant with the requirements of this Chapter.

20 (13) Any additional information that the City or the City Council may request of  
21 the applicant that is relevant to the City's consideration of the application.

22 (14) An affidavit or declaration of the applicant or authorized officer thereof  
23 certifying the truth and accuracy of the information in the application, acknowledging the  
24 enforceability of application commitments and certifying that the application meets all requirements  
25 of applicable law.

26 (15) A declaration that the applicant agrees to comply with this chapter and will  
27 abide by the City Council's decision to grant or deny a cable system franchise.

Section 14. That Title 5 of the Lincoln Municipal Code be amended by adding a new section numbered 5.15.140 to read as follows:

**5.15.140 Applications for Modification of a Franchise.**

(a) An application for modification of a franchise shall include, at a minimum, the following information:

(1) The specific information requested;

(2) The justification for the requested modification, including the impact of the requested modification on subscribers, the City and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of pro forma statements;

(3) A statement indicating whether the modification is sought pursuant to Section 625 of the Cable Act, 47 U.S.C. §545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. §545;

(4) Any other information the applicant believes is necessary for the City to make an informed determination on the application for modification; and

(5) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with the requirements of applicable law.

(b) A request for modification submitted pursuant to 47 U.S.C. §545 shall be considered in accordance with the requirements of that section.

Section 15. That Title 5 of the Lincoln Municipal Code be amended by adding a new section numbered 5.15.150 to read as follows:

**5.15.150 Application for Grant of A Renewal Cable System Franchise.**

(a) To the extent required by federal law, requests for renewal under the Cable Act will be received and reviewed in accordance with Section 626 of the Cable Act, 47 U.S.C. §546. If the provisions of Section 626(a)-(g) of the Cable Act, 47 U.S.C. §546(a)-(g), are properly invoked, the City shall issue an RFP after conducting a proceeding to: (i) review the renewal applicant's past

1 performance; and (ii) identify the City's future cable-related community needs and interests. The  
2 City shall establish deadlines and procedures for responding to the RFP, may seek additional  
3 information from the applicant, and shall establish deadlines for the submission of that additional  
4 information. An applicant's response to the City's RFP must, at a minimum, contain the information  
5 required under §5.15.130(d).

6 (b) If neither a renewal applicant nor the City activates in a timely manner or can activate  
7 the renewal process set forth in 47 U.S.C. §546(a)-(g) (including, for example, if the provisions are  
8 repealed), and except as to applications submitted pursuant to 47 U.S.C. §546(h), unless the City and  
9 the franchisee agree otherwise the provisions of §5.15.130(a)-(c) and §5.15.170 shall apply and a  
10 renewal request shall be evaluated using the same criteria as any other request for a franchise.

11 (c) Notwithstanding the above, a cable system operator may submit an application for  
12 renewal of a cable system franchise pursuant to 47 U.S.C. §546(h). Such a proposal may be  
13 submitted at any time and the City Council may, after affording the public adequate notice and  
14 opportunity for comment, grant or deny such a proposal at any time for any reason (including after  
15 proceedings have been commenced in accordance with 47 U.S.C. §546(a)). The denial of any  
16 proposal submitted pursuant to 47 U.S.C. Section 546 (h) shall not impact, in any way, any rights  
17 the franchisee may otherwise have under Section 546.

18 Section 16. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
19 section numbered 5.15.160 to read as follows:

20 **5.15.160 Applicant Representatives.**

21 Any person who files an application with the City for a franchise or modification shall  
22 forthwith, at all times, disclose to the City, in writing, the names, addresses, and occupations of all  
23 persons who are authorized to represent or act on behalf of the applicant in those matters pertaining  
24 to the application. The requirement to make such disclosure shall continue until the City shall have  
25 rejected or approved an applicant's application or until an applicant withdraws its application.

26 Section 17. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
27 section numbered 5.15.170 to read as follows:

1     **5.15.170       Consideration of Applications for a Franchise**

2             (a)     The City shall consider each application for a franchise (except for the renewal of a  
3 franchise under Section 546 a-g) where the application is found to be acceptable for filing and in full  
4 compliance with the requirements of this chapter and any applicable request for proposals. In  
5 evaluating an application for a franchise, the City shall consider, among other things, the following  
6 factors:

7                     (1)     The extent to which the applicant has substantially complied with applicable  
8 law and the material terms of any existing franchise for the City;

9                     (2)     Whether the quality of the applicant's service under any existing franchise  
10 or similar grant in the City, including signal quality, response to consumer complaints, billing  
11 practices and the like, has been reasonable in light of the needs and interests of the communities  
12 served;

13                    (3)     Whether the applicant has the financial, technical and legal qualifications to  
14 provide cable service;

15                    (4)     Whether the application satisfies the requirements established by the City  
16 under this chapter or in an RFP;

17                    (5)     Whether a cable system franchise application is reasonable to meet the future  
18 cable-related needs and interests of the community, taking into account the cost of meeting such  
19 needs and interests;

20                    (6)     Whether, to the extent not considered under §5.15.170(a)(5), an applicant for  
21 a cable system franchise will provide adequate access channel capacity, facilities or financial  
22 support;

23                    (7)     Whether issuance of a franchise is in the public interest considering the  
24 immediate and future effect on the public ways and private property that would be used by the  
25 communications facility, including the extent to which installation or maintenance as planned would  
26 require replacement of property or involve disruption of property, public services or use of the  
27 public ways; and the comparative superiority or inferiority of competing applications;

1           (8)   Whether approval of the application may eliminate or reduce competition in  
2 the delivery of cable service in the City; and

3           (9)   When considering an application for renewal under Section 546 a-g, the  
4 criteria specified in Section 546.

5           (b)   Where the City determines that an applicant's franchise application would serve the  
6 public interest, after considering the factors in §5.15.140(a) and any other relevant factors permitted  
7 by law to be considered, and subject to the applicant's agreement to the terms of an appropriate  
8 franchise agreement, the City Council may grant a franchise to the applicant, after complying with  
9 any public hearing requirements. The franchise agreement shall constitute a contract, freely entered  
10 into, between the City and the grantee. Said franchise agreement shall incorporate by reference the  
11 relevant provisions of this chapter. Any such franchise must be approved by ordinance of the City  
12 Council pursuant to Article II, Section 2(21) of the City Charter. If the City Council denies a request  
13 for a franchise, it shall issue a written decision explaining why the franchise was denied, which  
14 decision may be in any appropriate form. Without limiting its authority to deny an application for  
15 a franchise, the City specifically reserves the right to reject any application that is incomplete or fails  
16 to respond completely to an RFP. This chapter is not intended and shall not be interpreted to grant  
17 any applicant or existing franchisee or any third party standing to challenge the denial of an  
18 application or the issuance of a franchise to another.

19           Section 18. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
20 section numbered 5.15.141 to read as follows:

21   **5.15.180       Filing Fees.**

22           To be acceptable for filing, an application for an initial franchise, a renewal franchise, or a  
23 franchise modification shall be accompanied by a nonrefundable filing fee, payable to the City  
24 Treasurer, in the following amount or the maximum amount permitted by law, whichever is greater,  
25 to cover costs incidental to the award or modification of a franchise, as appropriate.

26           (a)   For an initial franchise:                               \$50,000.00

27           (b)   For modification of an existing franchise:           \$15,000.00

1           (c)     For renewal franchises, costs incidental  
2                             to the award of a franchise                             \$50,000.00

3           In addition to the foregoing initial filing fees, an applicant shall reimburse the City for the  
4 actual costs and expenses incurred by the City that are related to, or arise in the course of, reviewing  
5 and processing each application described in subsections (a), (b) and above, including the costs of  
6 legal, engineering, accounting and other consultants retained by the City, or services obtained by  
7 the City, to assist in reviewing the application. An applicant or franchisee, as the case may be, shall  
8 reimburse the City for any such costs within thirty (30) days of receipt of an invoice from the City.  
9 With regard to cable system franchisees, all fees and costs paid under this §5.15.180 shall be in  
10 addition to (and not in lieu of or offset against) all franchisee fees and access channel/institutional  
11 network support paid or provided pursuant to this chapter and a franchise.

12                     Section 19. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
13 section numbered 5.15.190 to read as follows:

14     **5.15.190       Acceptance.**

15           A franchise and its terms and conditions shall be accepted by a grantee by written instrument,  
16 in a form acceptable to the City Attorney, and filed with the City Clerk within thirty (30) days after  
17 the granting of the franchise by the City. In its acceptance, the grantee shall declare that it has  
18 carefully read the terms and conditions of this ordinance and the franchise and accepts all of the  
19 terms and conditions of this ordinance and the franchise and agrees to abide by the same. In  
20 accepting a franchise, a grantee shall indicate that it has relied upon its own investigation of all  
21 relevant facts, that it was not induced to accept the franchise.

22                     Section 20. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
23 section numbered 5.15.200 to read as follows:

24     **5.15.200       Franchise Term.**

25           The term of a franchise shall be as specified in a franchise agreement, but shall not exceed  
26 fifteen years, except that a franchisee may apply at any time for renewal or modification pursuant  
27 to applicable law.



1           Section 21. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
2 section numbered 5.15.210 to read as follows:

3   **5.15.210       Franchise Fee.**

4           (a)   A franchisee, in consideration of the privilege granted under a franchise for the use  
5 of public ways and the privilege to construct and operate a Communications Facility, shall pay to  
6 the City a franchise fee of five percent (5%) of its gross revenues, unless otherwise specified in a  
7 franchise. Every franchise shall reserve the right to increase the franchise fee to the maximum that  
8 may be charged consistent with federal and state law. In addition, unless a Franchise provides  
9 otherwise, an open video system operator (1) shall pay to the City, at a time directed by the City, an  
10 amount equal to the highest amount contributed by any entity operating a cable System for and in  
11 support of local origination, educational, and government use (including institutional network use,  
12 to the extent permitted by law) of its cable system; and (2) to the extent that such entity is providing  
13 other support for local origination, educational, or governmental use, the operator must duplicate  
14 that support within a time and in a manner directed by the City, or provide a cash equivalent  
15 acceptable to the City; or (3) if there is no such entity, the highest amount permitted under applicable  
16 law. In applying this section, the City may take such steps as it deems appropriate to ensure that the  
17 obligations borne by the open video system operator are no less than the obligations imposed upon  
18 the cable system operator providing the greatest benefits to the community, to the extent such a  
19 result is compelled by other franchises or by applicable law or regulations.

20           (b)   To the extent not prohibited by applicable law binding on the City, any unaffiliated  
21 video programming provider leasing capacity on an open video system shall pay quarterly to the  
22 City five percent (5%) of its gross revenues and shall comply with all applicable provisions of this  
23 Chapter.

24           (c)   A franchisee shall file with the City, thirty (30) days after the last day of each quarter,  
25 a gross revenue statement showing the gross revenues received by a franchisee for each revenue  
26 source during the preceding quarter. A franchisee shall pay the quarterly portion of the franchise fee  
27 to the City on or before the time such financial statement is due to be filed. A franchisee shall also

1 file, no later than ninety (90) days after the end of each of the franchisee's fiscal years, the  
2 franchisee's gross revenue statements for the preceding year, certified by an officer of the  
3 franchisee. Any franchise fee payment in adjustment for any shortfall of the total quarterly payments  
4 for the year shall be made at that time, in addition to any applicable interest and late charges.  
5 Adjustments for any overpayment shall be by credit to subsequent quarterly payments.

6 (d) The City shall have the right, consistent with the provisions of §5.15.330 of this  
7 chapter, to inspect a franchisee's books, files and records, in whatever form or medium maintained,  
8 to audit any and all relevant books, files and records pursuant to the Franchise Agreement, and to  
9 recompute any amounts determined to be payable under a franchise and this ordinance.

10 (e) In the event that a complete and accurate franchise payment is not received by the  
11 City on or before the applicable dates, interest shall be charged from such due date at an annual  
12 interest rate of eight and one-half percent (8 1/2%). Such interest shall be compounded daily. In  
13 addition to the foregoing, a franchisee shall pay a late charge of five percent of the amount of such  
14 payment.

15 (f) In the event a franchise is revoked or otherwise terminated prior to its expiration date,  
16 the franchisee shall file with the City, within ninety (90) days of the date of revocation or  
17 termination, a gross revenue statement certified by an officer of the franchisee showing the gross  
18 revenues received by the franchisee for each revenue stream since the end of the previous year and  
19 shall make adjustments at that time for the franchise fees due up to the date of revocation or  
20 termination.

21 (g) Payment of the franchise fee or any other compensation hereunder shall not be  
22 considered in the nature of a tax or in lieu of other taxes, fees or assessments imposed by the City.  
23 Unless otherwise provided by applicable law, the franchise fee and any other compensation required  
24 under this §5.15.210 is in addition to all other taxes, fees and payments that a franchisee may be  
25 required to pay under its franchise or any federal, state or local law.

1           (h)     A franchise fee shall not designate the franchise fee or other compensation paid to  
2 the City as a tax in any communication to a subscriber unless the franchise fee has been deemed a  
3 tax under applicable law.

4           (i)     No acceptance by or payment to the City of a franchise fee or other compensation,  
5 or any portion thereof, shall be construed as a release or an accord and satisfaction of any claim the  
6 City may have for further or additional sums due or for the performance of any other obligation of  
7 a franchisee, or as acknowledgment that the amount paid is the correct amount due.

8                     Section 22. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
9 section numbered 5.15.220 to read as follows:

10   **5.15.220       Insurance, Surety Instruments, Indemnity.**

11           (a)     Upon the granting of a franchise and following simultaneously with the filing of the  
12 acceptance of the franchise and at all times during the term of the franchise or any extension thereof,  
13 including the time for removal of facilities or management as a trustee as provided for herein, a  
14 franchisee shall obtain, pay all premiums for, and deliver to the City written evidence of payment  
15 of premiums for and certificates of insurance in the amounts and types set forth in the franchise. No  
16 franchise to use the public ways shall be valid or effective, notwithstanding acceptance by a  
17 franchisee, until and unless the City obtains certificates evidencing coverages required by the  
18 franchise. A franchisee shall ensure that all persons or entities acting on its behalf are adequately  
19 insured.

20           (b)     At a minimum, the following insurance requirements shall be met by a franchisee:

21                     (1)     A Communications Facility operator shall not commence construction or  
22 operation of the facility without obtaining all insurance required in a franchise. If the franchisee or  
23 its contractors or subcontractors do not have the required insurance, then the City may order such  
24 entities to stop work or operations until the insurance is obtained;

25                     (2)     Coverage afforded under required insurance policies shall not be cancelled,  
26 suspended or amended until at least thirty (30) days' prior written notice has been delivered to the  
27 City. All Policies shall be issued by companies authorized to do business in the State of Nebraska.

1 Financial ratings shall be no less than “A-1” in the latest edition of “Best’s Key Rating Guide,”  
2 published by A.M. Best Guide; and

3 (3) Unless otherwise set forth in a franchise agreement, all liability insurance  
4 policies required in a franchise shall name the City, its elected and appointed officials, officers,  
5 boards, commissions, employees, agents and volunteers as additional insureds. In the event of a  
6 claim under any required insurance policy, the franchisee shall pay all deductibles.

7 (c) In every franchise, the City shall reserve the right to: (i) review the insurance  
8 amounts and policy terms specified in the franchise no more than once a year; and (ii) require  
9 reasonable adjustments to such amounts and policy terms, consistent with the Franchise and the  
10 public interest.

11 (d) Failure to comply with the insurance requirements set forth in this section shall  
12 constitute a material violation of a franchise.

13 (e) Every Communications Facility operator shall provide the City with an irrevocable  
14 letter of credit in the same amount, to secure the payment of fees and compensation owed, to secure  
15 any other performance promised in a franchise and to pay any taxes, assessments, levies or liens  
16 owed to the City. The letter of credit shall be in the amount of \$100,000, unless a franchise requires  
17 otherwise. A letter of credit shall be in a form and with an institution acceptable to the City. Such  
18 approval shall not be unreasonably withheld.

19 (f) Every franchise for the construction of a new Communications Facility shall require  
20 the franchisee to post a performance bond in an amount acceptable to the City to secure the  
21 performance of the franchisee’s obligations and responsibilities under the franchise and applicable  
22 law.

23 (g) No franchise to use the public ways issued to a Communications Facility operator  
24 shall be valid or effective unless and until the City obtains adequate indemnity from such operator.  
25 The indemnity must at least:

1           (1)     Release the City from and against any and all liability and responsibility in  
2 or arising out of the construction, operation, maintenance, or reconstruction of the Communications  
3 Facility;

4           (2)     Indemnify and hold harmless the City and its trustees, elected and appointed  
5 officials, officers, boards, commissions, employees, agents and volunteers from and against any an  
6 all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs,  
7 expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments or decrees sustained by  
8 the City or any third party arising out of or by reason of, or resulting from the acts, errors or  
9 omissions of the Communications Facility operator, or its agents, independent contractors, or  
10 employees related to or in any way arising out of the construction, operation, maintenance or  
11 reconstruction of the Communications Facility; and

12           (3)     Provide that the covenants and representations relating to the indemnification  
13 provision shall survive the term of any franchise and shall continue in full force and effect as to the  
14 party's responsibility to indemnify.

15           (h)     The City shall use its best efforts to notify the franchisee within ten (10) days of any  
16 claim or suit against the City for which the franchisee may be required to indemnify the City. In the  
17 event franchisee is required to indemnify the City in connection with such claim or action, the  
18 franchisee shall consult with the City in the franchisee's control of and the defense of such claim  
19 or action. The franchisee shall have the right to select defense counsel. The City shall fully  
20 cooperate with the franchisee in the defense of such claim or action.

21           (i)     Notwithstanding anything to the contrary, a franchisee shall be under no obligation  
22 or requirement of any kind to indemnify or hold the City harmless from any act or omission  
23 involving the sole negligence of the City or its trustees, elected and appointed officials, officers,  
24 boards, commissions, employees, agents and volunteers. Nor shall any franchisee be required to  
25 indemnify or hold the City or its trustees, elected and appointed officials, officers, boards,  
26 commissions, employees, agents and volunteers from any claim or action arising out of the City's

1 use or misuse of the Communications Facility, including but not limited to the City's use or misuse  
2 of the access channels.

3           Section 23. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
4 section numbered 5.15.230 to read as follows:

5 **5.15.230       Liquidated Damages.**

6           (a) A franchise shall require liquidated damages for injuries suffered by the City due to  
7 specified franchise violations. The City and any franchisee shall agree upon and specify in a  
8 franchise certain amounts which represent both parties' best estimate of the damages resulting from  
9 such injuries.

10          (b) All remedies under this chapter and any franchise are cumulative unless otherwise  
11 expressly stated. The exercise of one remedy shall not foreclose the use of another, nor shall the  
12 exercise of a remedy, the payment of liquidated damages or the imposition of sanctions relieve a  
13 franchisee of its obligations to comply with its franchise. Remedies may be used singly or in  
14 combination. In addition, the City may exercise any rights it has at law or equity.

15          (c) Recovery by the City of any amounts under insurance, a security fund, a performance  
16 bond, a letter of credit or otherwise does not limit a franchisee's duty to indemnify and hold  
17 harmless the City and its elected and appointed officers, officials, boards, commissions, employees,  
18 agents and volunteers in any way; nor shall such recovery relieve a franchisee of its obligations  
19 under a franchise, limit the amounts owed to the City or in any respect prevent the City from  
20 exercising any other right or remedy it may have.

21           Section 24. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
22 section numbered 5.15.240 to read as follows:

23 **5.15.240       Forfeiture and Termination.**

24           (a) In addition to all other rights and powers retained by the City under this ordinance  
25 and any franchise issued pursuant hereto, the City reserves the right to forfeit and terminate the  
26 franchise and all rights and privileges of the franchisee in the event of a violation of a material  
27 provision of this chapter or any material City regulation, rule, order or determination, or a material

1 violation of the terms and conditions of the franchise. A material violation of a franchise by the  
2 franchisee shall include, but shall not be limited to, the following:

3 (1) An uncured violation of any material provision of the franchise following  
4 thirty (30) days written notice;

5 (2) An attempt to evade any material provision of the franchise or practice of any  
6 fraud or deceit upon subscribers or upon the City;

7 (3) Failure to begin or substantially complete any system construction or system  
8 extension as set forth in the franchise;

9 (4) Failure to restore service after three (3) consecutive days of interrupted  
10 service, except when written approval of such interruption is obtained from the City;

11 (5) Material misrepresentation of fact in the application for, or during negotiation  
12 relating to, the franchise;

13 (6) Failure to provide surety and indemnity as required by a franchise;

14 (7) Any transfers of the franchise, requiring consent of the City, without the prior  
15 consent of the City; or

16 (8) Any failure to pay the fees and/or compensation required under a franchise.

17 (b) None of the foregoing shall constitute a material violation of a franchise if the  
18 breach, which occurs, is without fault of the franchisee or its agents and employees or occurs as a  
19 result of circumstances beyond the franchisee's control. A franchisee shall not be excused by mere  
20 economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents, or  
21 employees; provided, however, that damage to equipment causing a service interruption shall be  
22 deemed to be the result of circumstances beyond the franchisee's control if it is caused by any  
23 negligent act or unintended omission of its employees, assuming proper training, or agents,  
24 assuming reasonable diligence in their selection, or sabotage or vandalism or malicious mischief by  
25 its employees or agents. A franchisee shall bear the burden of proof in establishing the existence of  
26 such conditions.

1           (c)     Whenever the City determines that a franchisee has (i) violated a provision of this  
2 chapter or any City regulation, rule, order or determination or (ii) violated any material terms or  
3 conditions of a franchise, it shall make a written demand by certified mail that a franchisee comply  
4 with this chapter, its franchise or a City regulation, rule, order, or determination, as appropriate. If  
5 the violation by a franchisee continues for a period of thirty days following such written demand  
6 without written proof that the corrective action has been taken or is being actively and expeditiously  
7 pursued to the satisfaction of the City, the City may consider forfeiting or terminating the franchise,  
8 provided, however, a written notice thereof shall be received by the franchisee at least fourteen (14)  
9 days in advance and the franchisee must be given an opportunity to appear before the City Council  
10 to present its arguments.

11           (d)     Except as otherwise provided herein, or set forth in a franchise agreement, should the  
12 City determine, following the public hearing, that the violation by a franchisee was the fault of the  
13 franchisee or its agents and employees or within the franchisee's control, the City may, by  
14 resolution, declare that the franchise be forfeited and terminated; provided, however, the City may,  
15 in its discretion, provide an opportunity for the franchisee to remedy the violation and come into  
16 compliance with its franchise, City regulations, rules, orders or determinations and this ordinance  
17 so as to avoid the forfeiture and termination of the franchise.

18           Section 25. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
19 section numbered 5.15.250 to read as follows:

20     **5.15.250       Foreclosure.**

21           Upon the foreclosure or other judicial sale of any of the facilities, equipment or property of  
22 a franchisee, or upon the termination of any lease covering all or a substantial part of a  
23 Communications Facility, or upon the occasion of additional events which effectively cause  
24 termination of a Communications Facility's operation, a franchisee shall immediately notify the City  
25 of such fact, and such notification or the occurrence of such terminating events shall be treated as  
26 a notification that a transfer of the franchisee has taken place, and the provisions of this ordinance  
27 governing the consent of the City to such a transfer shall apply.



1           Section 26. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
2 section numbered 5.15.260 to read as follows:

3   **5.15.260       Receivership.**

4       Any franchise may, at the option of the City, be terminated by the City Council 120 days  
5 after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take  
6 over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment  
7 for the benefit of creditors or other action or proceeding, unless within that 120-day period:

8       (a)   Such assignment, receivership or trusteeship has been vacated;

9       (b)   Such assignee, receiver or trustee shall have: (i) fully complied with all of the  
10 provisions of this ordinance and the applicable franchise; (ii) remedied any defaults thereunder; and  
11 (iii) executed an agreement duly approved by a court having jurisdiction whereby such receiver,  
12 assignee or trustee assumes and agrees to be bound by each and every provision of this ordinance  
13 and the franchise granted to the franchisee.

14           Section 27. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
15 section numbered 5.15.270 to read as follows:

16   **5.15.270       Purchase or Transfer of a Cable System by the City.**

17       (a)   If a cable system franchise granted under this chapter expires and the renewal thereof  
18 is denied and all appeals have been exhausted, the City may acquire ownership of the cable system  
19 at fair market value, subject to a franchisee's rights under 47 U.S.C. §546, unless prohibited by  
20 applicable law binding on the City.

21       (b)   If the City terminates or forfeits a cable system franchise for cause, the City may  
22 acquire ownership of the cable system at an equitable price, unless prohibited by applicable law  
23 binding on the City.

24       (c)   Nothing in this section shall be interpreted to limit whatever powers under eminent  
25 domain the City may have.

26           Section 28. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
27 section numbered 5.15.280 to read as follows:

1     **5.15.280       Effects of Litigation.**

2             Pending litigation or any appeal to any regulatory body or court having jurisdiction over a  
3 franchisee shall not excuse the franchisee from the performance of its obligations under this chapter  
4 or its franchise unless a stay specifically applicable to the performance of the obligation is obtained  
5 from a court or regulatory body of competent jurisdiction. Failure of the franchisee to perform such  
6 obligations because of pending litigation or a petition, in the absence of a stay issued by a court or  
7 regulatory body of competent jurisdiction, may result in forfeiture or termination pursuant to the  
8 provisions of this chapter and/or a franchise.

9             Section 29. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
10 section numbered 5.15.290 to read as follows:

11     **5.15.290       Removal of Cable Communications System.**

12             At the expiration of the term for which a franchise issued hereunder is granted (and the  
13 denial of any renewal thereof and the exhaustion of all appeals), or upon its termination as provided  
14 herein, a franchisee shall forthwith, upon notice by the City, remove at its own expense all  
15 designated portions of the communications facility from all streets and public ways within the City,  
16 and shall restore said streets and public ways to their former condition; provided, however, the  
17 franchisee shall have the right to sell its physical plant to a subsequent franchisee, subject to City  
18 approval, in which case said plant need not be removed. If a franchisee fails to remove its facilities  
19 upon request, the City may perform the work at the franchisee's expense. Regardless of the existence  
20 or amount of any security fund, bond or letter of credit, the obligation of a franchise to remove shall  
21 survive the termination of the franchise. This provision, however, does not require a franchisee to  
22 remove any facilities that are used to provide another service for which the franchisee holds a valid  
23 franchise or other authorization issued by the City. Nothing herein shall affect the City's right to  
24 take possession of abandoned facilities.

25             Section 30. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
26 section numbered 5.15.300 to read as follows:

1     **5.15.300       Transfer of Ownership or Control.**

2             (a)     The procedures set forth in this Section shall apply to all transfers of a franchise or  
3     changes in the control of the franchisee unless a franchise agreement provides otherwise.

4             (b)     No Transfer (including, but not limited to, a transfer as a result of forced or voluntary  
5     sale, merger, consolidation, receivership or any other means) shall occur unless prior application is  
6     made by a franchisee to the City and the City Council's prior written consent is obtained, pursuant  
7     to this Chapter and a franchise. Every such Transfer shall make the franchise subject to cancellation  
8     unless and until the City shall have consented. The granting of approval for a Transfer in one  
9     instance shall not render unnecessary approval of any subsequent Transfer.

10            (c)     A franchisee shall promptly notify the City of any proposed Transfer at least 120  
11     calendar days prior to the contemplated effective date of a Transfer, the franchisee shall submit to  
12     the City an application for approval of the Transfer.

13            (d)     The parties to the Transfer shall make a written request to the City for its approval  
14     of the Transfer and file all documents, forms and information required to be filed by FCC Form 394.

15            (e)     A proposed transferee must show financial responsibility as determined by the City  
16     and must agree, in writing, to comply with all provisions of the franchise and this Chapter, and  
17     assume the obligations, liabilities and responsibility for all acts and omissions, known and unknown,  
18     of the previous franchisee under this chapter and franchise.

19            (f)     For the purpose of determining whether it shall consent to such Transfer, the City  
20     may inquire into and consider all financial, legal and technical qualifications of the prospective  
21     transferee and such other matters as the City may lawfully consider to determine whether the  
22     Transfer should be approved, denied or conditioned, and the franchisee shall assist the City in any  
23     such inquiry. The City may require any conditions which it deems necessary at the time of review  
24     to ensure that the transferee or assignee will comply with this Chapter and the franchise.

25            (g)     Approval by the City Council of a Transfer does not constitute a waiver or release  
26     of any of the rights of the City under this chapter or a franchise, whether arising before or after the  
27     date of the transfer.

1           (h) No transfer to an unaffiliated entity shall be approved unless an acceptable  
2 compliance program for a documented noncompliance issue pending on the date of the transfer  
3 application has been approved by the City.

4           Section 31. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
5 section numbered 5.15.310 to read as follows:

6       **5.15.310       Rate Regulation.**

7           (a) The City may regulate a franchisee's rates and charges to the maximum extent  
8 permitted by law or regulation, in accordance with the regulations established by the FCC for the  
9 regulation of rates.

10          (b) A franchisee shall provide at least one billing cycle prior written notice (or such  
11 longer period as may be specified in FCC regulations) to subscribers and to the City of any changes  
12 in rates or charges, regardless of whether or not the franchisee believes the affected rates or charges  
13 are subject to regulation, except to the extent that such notice requirement is specifically waived by  
14 governing law.

15          Section 32. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
16 section numbered 5.15.320 to read as follows:

17       **5.15.320       Reports**

18          Unless otherwise set forth in a franchise agreement, a franchisee shall submit to City, upon  
19 request, existing reports which are reasonably necessary or desired to determine compliance with  
20 franchise obligations and ordinance requirements.

21          Unless otherwise provided in the franchise agreement, such reports shall include, but not be  
22 limited to:

23          (a) Annual Report. No later than ninety days after the end of each of the franchisee's  
24 fiscal years, the franchisee shall file a written report with the City, which shall include:

25               (1) A summary of the previous calendar year's activities in development of this  
26 system, including but not limited to services begun or dropped, number of subscribers, including

1 gains and losses, homes passed, and miles of cable distribution plants in service, including different  
2 classes if applicable.

3           (2) An audited financial statement, including a statement of income, a balance  
4 sheet, and a statement of sources and applications of funds. The statement shall include notes that  
5 specify all significant accounting policies and practices upon which it is based, including, but not  
6 limited to, depreciation rates and methodology, overhead and intrasystem cost allocation methods,  
7 and basis for interest expense. A summary shall be provided comparing the current year with the  
8 three previous years. The statement shall contain a summary of franchise fee payments and any  
9 adjustment thereto as specified in §5.15.210 of this chapter. If the franchisee operates other cable  
10 systems, then, in lieu of audited financial statements of the system, the franchisee may submit the  
11 financial statement referred to above as supplementary information to the audited financial  
12 statements of its entire operations. Such audited financial statements of a multiple system operator  
13 shall contain an accountant's report stating what procedures have been applied to the supplementary  
14 information and the accountant's opinion on the supplementary information in relation to the basic  
15 financial statements taken as a whole. The franchisee shall obtain written permission from the City  
16 in advance in order to submit his financial statements in this manner, and an officer of the company  
17 shall attest to the accuracy of the financial information provided.

18           (3) A current statement of cost of any construction by component category.

19           (4) An operating budget for the system for the next year and capital expenditures  
20 budget for the next two years. All significant assumptions upon which the budgets and underlying  
21 projections are based should be duly noted.

22           (5) A reconciliation between previously projected estimates and actual results.

23           (6) A summary of complaints, identifying the number and nature of complaints  
24 and their disposition.

25           (7) If the franchisee is a corporation, a list of officers and members of the board  
26 and the officers and board members of any parent corporation.

1           (8)   A list of all partners or stockholders holding one percent or more ownership  
2 interest in the franchisee and any parent corporation; provided, however, that when any parent  
3 corporation has in excess of 1,000 shareholders and its shares are publicly traded on a national stock  
4 exchange, then a list of the twenty largest stockholders of the voting stock of such corporation shall  
5 be disclosed.

6           (9)   A report of franchisee's employees in the City designed to demonstrate  
7 compliance with §5.15.490 of this chapter upon a form prescribed by the City.

8           (10)  A copy of all the franchisee's rules and regulations applicable to subscribers  
9 and users of the cable communications system.

10          (11)  A report relating to all copyright fees paid and copies of all reports or  
11 documents submitted to the copyright office of the Library of Congress.

12          (b)   The City may specify the form and details of all reports, with the franchisee given  
13 an opportunity to comment in advance upon such forms and details. The City may change the filing  
14 dates for reports upon reasonable request of the franchisee.

15               Section 33. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
16 section numbered 5.15.330 to read as follows:

17   **5.15.330       Access to Books and Records.**

18          (a)   The City shall have the right, upon reasonable notice, to inspect and have franchisee  
19 copy at the City's expense, at any time during normal business hours, the documents, books and  
20 records and other like material of a franchisee which the City deems necessary in order to monitor  
21 compliance with a franchise. Access to records and other materials shall not be denied by a  
22 franchisee on the basis that said records and materials contain trade secret, proprietary or  
23 confidential information; provided, however, that the franchisee may require that the City enter into  
24 a reasonable confidentiality agreement prior to inspecting any records or material that the franchisee  
25 reasonably believes contains trade secrets, proprietary or confidential information which the public  
26 release thereof would harm or jeopardize the franchisee's competitive position. Documents, books  
27 and records shall be maintained for a period of at least five (5) years, except that (i) any record that

1 is a public record shall be maintained for the period required by state law; (ii) any contract shall be  
2 maintained until it expires; and (iii) a franchise may specify a shorter period for certain categories  
3 of voluminous documents, books and records where the information contained therein can be  
4 derived simply from other materials. If any of the information provided by a franchisee pursuant to  
5 this chapter is false or fraudulent, the City may impose sanctions on the offending franchisee or  
6 declare its franchise forfeited, unless such action is prohibited by applicable law. In addition, failure  
7 to provide any information required by this chapter shall be grounds for appropriate remedies.

8 (b) For purposes of this chapter, the terms “records,” “documents” and “books” shall be  
9 read expansively to include information in whatever format stored. Books, records and documents  
10 requested shall be produced at the franchisee’s local office.

11 Section 34. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
12 section numbered 5.15.340 to read as follows:

13 **5.15.340 Filings.**

14 A franchisee shall upon request, file with the City Clerk all public (non-confidential) reports  
15 and materials submitted to or received from state and federal agencies that pertain to the operation  
16 of the Communications Facility in the city.

17 Section 35. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
18 section numbered 5.15.350 to read as follows:

19 **5.15.350 System Technical Standards.**

20 Unless prohibited by law, a franchisee’s Communications Facility within the City shall meet  
21 or exceed the technical standards set forth in 47 C.F.R. §76.601, et seq., as they are amended from  
22 time to time.

23 Section 36. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
24 section numbered 5.15.360 to read as follows:

25 **5.15.360 Access and Local Programming.**

26 (a) All franchises shall make provisions for access programming.

1           (1)     Except as expressly permitted by federal law, a franchisee shall have no  
2 editorial control over the content of access channel programs (except for such programming as the  
3 franchisee may cablecast on access channels). Except as otherwise provided in a franchise  
4 agreement, the City may require a franchisee or a non-profit corporation or other entity selected to  
5 manage the access channels to establish reasonable rules for the use of those channels consistent  
6 with the requirements of this ordinance, a franchise, applicable law and the intended purpose of such  
7 channels. Such rules shall be subject to review and approval by the City. Alternatively, the City  
8 itself may establish rules for the use of access channels.

9           (2)     Any access channel designated by the City as a public access channel shall  
10 be made available for use by the general public, including groups or individuals, on a non-  
11 discriminatory basis, with priority to local access production at no charge for channel or equipment  
12 use.

13           Section 37. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
14 section numbered 5.15.370 to read as follows:

15     **5.15.370       Leased Access.**

16           Unless applicable law provides otherwise, a franchisee shall make channels available for  
17 leased or commercial use in accordance with 47 U.S.C. §532.

18           Section 38. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
19 section numbered 5.15.380 to read as follows:

20     **5.15.380       Public Drops.**

21           Except as otherwise provided in a franchise, every franchisee shall provide upon request the  
22 following, at no cost to the City: (i) at least one drop to each government building, school, library,  
23 fire station and police station in its franchise area; and (ii) activated basic service programming to  
24 each government building, school, library, fire station and police station that receives a drop.

25           Section 39. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
26 section numbered 5.15.390 to read as follows:



1     **5.15.390       Parental Control.**

2             The City believes that parents should have the greatest discretion possible in controlling the  
3 viewing of programming by their minor children. A franchisee shall therefore make available to any  
4 subscribers, upon request, the option of blocking the audio and video portion of any channel or  
5 channels of programming entering a subscriber's home. This control option shall be provided at no  
6 charge, except to the extent that federal law specifically provides that a franchisee shall be permitted  
7 to so charge a subscriber, provided that the franchisee may require a reasonable deposit for the use  
8 of any customer premises device. The control option described herein shall be made available to all  
9 subscribers requesting it when any cable service is provided, or within a reasonable time thereafter.

10            Section 40. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
11 section numbered 5.15.400 to read as follows:

12     **5.15.400       Institutional Services.**

13             A franchisee is encouraged to provide institutional services over its Communications  
14 Facility.

15            Section 41. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
16 section numbered 5.15.410 to read as follows:

17     **5.15.410       Construction Standards.**

18             (a)    If a franchisee is required to perform a proof of performance or other test under  
19 applicable law or regulations, the franchisee shall, upon request, submit a written report of the test  
20 results to the City within five (5) days of such request. If permitted by applicable law, the City  
21 subsequently may require a full report on any deficiencies disclosed by a specific test within such  
22 reasonable period of time as it may designate.

23             (b)    Annual proof of performance and signal leakage tests shall be conducted as required  
24 under the rules and regulations of the FCC.

25             (c)    Each franchisee shall maintain accurate as built maps and improvement plans which  
26 show the location, size and a general description of all facilities installed in the public ways and any  
27 power supply sources (including voltages and connections). Maps shall be based upon

1 post-construction inspection to verify location. Each franchisee shall make available for review by  
2 the City at the franchisee's local office or at a mutually agreed upon location a map showing the  
3 location of its facilities, in such detail and scale as the franchisee maintains in the normal course  
4 of business, in order for the City to reasonably determine the location of the franchisee's facilities.

5 Section 42. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
6 section numbered 5.15.420 to read as follows:

7 **5.15.420 Construction and Installation Work**

8 (a) The construction, repair, maintenance, and reconstruction of Communications  
9 Facilities are subject to, and shall be performed in compliance with, all applicable federal, state and  
10 City laws. The City shall have the right to inspect all construction and installation work performed  
11 by a franchisee subject to this chapter as it shall find necessary to ensure compliance with the  
12 provisions of applicable law.

13 (b) Worker facilities, conditions, and procedures shall comply with the standards of the  
14 Occupational Safety and Health Administration.

15 Section 43. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
16 section numbered 5.15.430 to read as follows:

17 **5.15.430 Location of Structures, Lines, and Equipment**

18 (a) A franchisee shall utilize existing poles, conduits, and other facilities whenever  
19 possible, and shall not construct or install any new, different, or additional poles, conduits, or other  
20 facilities whether on public property or on privately-owned property until any necessary approval  
21 of the property owner or appropriate governmental authority is obtained. However, the location and  
22 installation of any pole, conduit, or other facility by a franchisee shall not create a vested interest,  
23 and such poles, structures, or facilities shall be removed, replaced, or modified by a franchisee at  
24 its own expense whenever the City determines that the public interest so necessitates.

25 (b) The Communications Facility installed by the franchisee within the City shall be  
26 located so as to cause minimum interference with the proper use of streets, alleys, and other public  
27 ways and places and to cause minimum interference with the rights or reasonable convenience of

1 property owners who adjoin any of the streets, alleys, or other public ways or places and where they  
2 will not interfere with any gas, electric, telephone, water, or other pre-existing utility facility.

3 (c) All such poles and other fixtures in any street or public way shall be placed in  
4 accordance with Chapter 14.64 of Lincoln Municipal Code.

5 (d) In those areas of the City where both electric and telephone utility lines have been  
6 placed underground, a franchisee shall place its lines and installations underground. In areas where  
7 either telephone or electric facilities are above ground at the time of installation, the franchisee may  
8 install its lines and installations above ground; provided, that at such time as those other aerial  
9 facilities are placed underground, the franchisee shall forthwith place its facilities underground, as  
10 required by Section 5.17.190 of the Telecommunications Ordinance, and the cost of such shall be  
11 borne by the franchisee, with no special charge being imposed upon any subscriber for such change  
12 unless otherwise permitted by applicable law. In new housing developments, a franchisee shall  
13 install distribution cables at the same time utility facilities are being installed, if reasonably possible.  
14 In the event the City compensates any other person or entity for relocating its plant, facilities or lines  
15 underground, then the franchisee shall be similarly compensated.

16 (e) When the franchisee uses any poles which are municipally owned, the rate shall be  
17 fair, reasonable, and nondiscriminatory.

18 Section 44. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
19 section numbered 5.15.440 to read as follows:

20 **5.15.440 Moving of Buildings.**

21 A franchisee shall, on the request of any person or entity holding a valid house moving  
22 permit, temporarily raise or lower its wires or cables to permit the moving of buildings or other large  
23 objects. With the exception of the City, the expense of such temporary raising or lowering of wires  
24 shall be paid by the person or entity making the request, and the franchisee shall have the authority  
25 to require such payment in advance. A franchisee shall be given not less than forty-eight (48) hours  
26 advance notice to arrange for such temporary wire changes.

1           Section 45. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
2 section numbered 5.15.450 to read as follows:

3   **5.15.450       Trimming Trees.**

4           A franchisee shall have the authority to trim trees overhanging public ways so as to prevent  
5 the branches of such trees from coming in contact with a Communications Facility. Any tree  
6 trimming shall be performed in strict accordance with all City codes, rules, regulations, policies and  
7 procedures. The City may require all trimming to be done under its supervision and direction and  
8 at the expense of the franchisee. Nothing in this section shall be construed to give a franchisee the  
9 right to trim trees located on private property.

10          Section 46. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
11 section numbered 5.15.460 to read as follows:

12   **5.15.460       Service Area.**

13          In addition to satisfying such requirements as may be established in a franchise, every  
14 franchisee shall operate its Communications Facility subject to the following conditions, except as  
15 prohibited by federal law:

16          (a)   Unless otherwise set forth in a franchise agreement, it is the policy of the City that  
17 every franchisee shall extend its communications facility throughout its Franchise Area upon request  
18 to any person or entity. Such extension shall be provided within a reasonable period of time taking  
19 into account the circumstances. A grantee shall endeavor to complete an extension within thirty (30)  
20 days.

21          Section 47. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
22 section numbered 5.15.470 to read as follows:

23   **5.15.470       Protection of Privacy.**

24          Protection of subscriber privacy shall be assured in accordance with the provisions of 47  
25 U.S.C. §551, as existing or as may from time to time be amended. Nothing herein shall prohibit the  
26 City from establishing specific privacy requirements in a franchise, provided those requirements do  
27 not conflict with federal law.

1           Section 48. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
2 section numbered 5.15.480 to read as follows:

3 **5.15.480       Continuity of Service.**

4           (a)   It is the right of all subscribers in a franchise area to continuously receive all  
5 available services from a franchisee as long as their financial and other obligations to the franchisee  
6 are satisfied.

7           (b)   A franchisee shall ensure that all subscribers receive continuous and uninterrupted  
8 service. At the City's request, a franchisee shall, as trustee for its successor in interest, operate its  
9 communications facility for a temporary period (the "Transition Period") following the expiration  
10 (and denial of any renewal thereof including the exhaustion of all appeals), termination or other  
11 revocation of its franchise, or following a franchise transfer, as necessary to maintain service to  
12 subscribers, and shall cooperate with the City to assure an orderly transition from the existing  
13 franchisee to the successor franchisee.

14           Section 49. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
15 section numbered 5.15.490 to read as follows:

16 **5.15.490       Equal Opportunity Employment; Non-Discrimination**

17           (a)   Equal opportunity in employment shall be afforded by a franchisee to all qualified  
18 persons, and no person shall be discriminated against in employment because of race, color, religion,  
19 sex, disability, national origin, ancestry, age, or marital status. A franchisee shall establish, maintain,  
20 and carry out a positive, continuing program of specific practices designed to assure equal  
21 opportunity in every aspect of company employment policy and practice. A franchisee shall  
22 immediately comply with all federal, state and local equal opportunity employment acts and  
23 practices and shall forthwith comply with the equal employment opportunity program of the City.

24           (b)   A franchisee shall not deny service or otherwise discriminate against any person on  
25 the basis of race, color, religion, national origin, disability, ancestry, sex, marital status or age.

26           (c)   A franchisee shall not discriminate among persons or the City, or take any retaliatory  
27 action against a person or the City because of that entity's exercise of any right it may have under

1 federal, state, or local law, nor may the franchisee require a person or the City to waive such rights  
2 as a condition of taking service.

3 (d) Except as federal law prohibits enforcement of this provision, a franchisee shall not  
4 deny service or levy different rates and charges on any group of potential subscribers because of the  
5 income of the residents of the local area in which such group resides.

6 Section 50. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
7 section numbered 5.15.500 to read as follows:

8 **5.15.500 Administration.**

9 (a) For the purpose of providing day-to-day municipal administration of telecommuni-  
10 cations operations within the City, the City Council, through the budgetary process, may consider  
11 at the request of the Mayor or on its own motion, the establishment of a position in the classified  
12 service designated as telecommunications officer who shall be assigned to an existing department  
13 of the City. The officer's power and responsibilities may include, but not be limited to, the following  
14 functions:

15 (1) Assisting in the preparation of invitations to bid for a franchise; establishing  
16 criteria for review and ranking of franchise applications; reviewing and screening applications for  
17 franchises and making recommendations to the City Council and Mayor.

18 (2) Monitoring the timely performance of a franchisee in making application for  
19 and obtaining all certificates, permits, and agreements as provided for in this chapter.

20 (3) Monitoring the performance of a franchisee in meeting the construction  
21 timetable as provided for in a franchise.

22 (4) Advising and making recommendations to the City Council and Mayor on  
23 violations of a franchise and on matters which may constitute grounds for revocation of a franchise  
24 in accordance with this chapter.

25 (5) Monitoring and reviewing changes in subscriber fees and rates for conformity  
26 to the franchise and this chapter and advising and making recommendations to the City Council and  
27 Mayor thereon.

1           (6)    Advising and making recommendations to the City Council and Mayor on  
2 technical, engineering, and police power regulations of Communications Facility operations within  
3 the City.

4           (7)    Cooperating with other communications facilities and governmental units in  
5 the development of and in the supervision of the interconnection of facilities.

6           (8)    Receiving and reviewing all franchise records and reports as required by this  
7 chapter, as well as all franchise reports filed with the FCC, and, in the officer's discretion, requiring  
8 the preparation and filing of information in addition to that required therein, as may reasonably be  
9 required to accomplish the purposes of a franchise and this chapter.

10          (9)    Monitoring performance of a franchisee under any other terms of a franchise  
11 agreement and this Chapter.

12          (10)   Making an annual report to the City Council and Mayor which shall include  
13 among other things, an account of franchise fees received, the total number of hours of utilization  
14 of access channels with hourly subtotals for various programming categories, and a review of any  
15 plans submitted during the year by the franchisee for development of new services.

16          (11)   Conducting any evaluations of a Communications Facility in conjunction with  
17 the Cable Advisory Board and reporting to the council and Mayor. Assisting in any franchise  
18 negotiations or renegotiations.

19          (12)   Enforcing the requirements of this chapter and the franchise, with the  
20 assistance of the City Attorney or through other appropriate legal counsel, as necessary, including  
21 the recovery of liquidated damages.

22          (13)   Receiving subscriber complaints and advising a franchisee of the receipt of  
23 subscriber complaints affecting the franchisee's Communications Facility.

24          (14)   Assisting and advising the Cable Advisory Board.

25          (15)   Providing assistance and guidance to City departments in the use of  
26 communications facilities.

27          (16)   Providing assistance and guidance to the public in the use of access facilities.

1           (17) Developing a program for utilization of any government access channels and  
2 assisting City departments in their use.

3           (18) Drafting and monitoring regulations pertaining to a franchisee's use of  
4 channels dedicated to access use when they are not being used for that purpose.

5           (b) Unless specified to the contrary elsewhere in this chapter or a franchise, all filings,  
6 submissions, and notifications by the franchisee to the City shall be delivered to, or mailed to, the  
7 telecommunications officer. Where the original of any such filing, submission, or notification is  
8 made to another City office pursuant to this Chapter or the franchise, a copy shall be simultaneously  
9 provided to the telecommunications officer.

10           Section 51. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
11 section numbered 5.15.510 to read as follows:

12 **5.15.510 Cable Advisory Board.**

13           (a) The City may establish a Cable Advisory Board, which shall consist of eleven  
14 members, including a chairperson, appointed by the Mayor, subject to confirmation by majority vote  
15 of the City Council, for staggered three-year terms. Present members of the Cable Television  
16 Advisory Board shall be deemed to be members of the Cable Advisory Board established hereunder  
17 and shall serve until their present terms expire. Board members shall be broadly representative of  
18 the City's population with diverse backgrounds and a reasonable knowledge of cable communi-  
19 cations. No board member shall be affiliated with a local cable franchisee in any way.

20           (b) Reasonable expenses of the Cable Advisory Board, including any necessary support  
21 staff, shall be provided by the City through the telecommunications officer.

22           (c) The board's powers and functions shall include the following:

23           (1) Consider unresolved complaints and disagreements between franchisees,  
24 subscribers and/or users of a Communications Facility and issue rulings thereon.

25           (2) Advise the City Council and Mayor on the regulation of rates in accordance  
26 with the provisions of this chapter.



1           (3)    Advise the City Council and Mayor regarding general policy relating to the  
2 cable services provided to subscribers and the operation and use of access and leased access  
3 channels with a view to maximizing the diversity and usefulness of programs and services to  
4 subscribers.

5           (4)    Review or assist in the drafting of (unless public access is administered by  
6 a franchisee) and comment upon the rules governing use of any public access channels and access  
7 production equipment including those adopted by a franchisee.

8           (5)    Recommend policies to encourage use of access and leased access channels  
9 among the widest range of institutions, groups including minorities, and individuals within the City  
10 in cooperation with the franchisee.

11          (6)    Perform such other duties as the City Council and Mayor may from time to  
12 time assign to the board.

13               Section 52. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
14 section numbered 5.15.520 to read as follows:

15   **5.15.520       No Recourse Against City.**

16               The City shall enjoy such immunities as it otherwise has under applicable law. Nothing in  
17 this Chapter or any franchise entered into hereunder shall be deemed to expand or impair any  
18 immunity otherwise available to the City.

19               Section 53. That Title 5 of the Lincoln Municipal Code be amended by adding a new  
20 section numbered 5.15.530 to read as follows:

21   **5.15.530       Severability.**

22               If any term, condition or provision of this Chapter shall, to any extent, be held to be invalid  
23 or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be  
24 valid in all other respects and continue to be effective. In the event of a subsequent change in  
25 applicable law, so that the provision which had been held invalid is no longer invalid, said provision  
26 shall thereupon return to full force and effect without further action by the City or the City Council  
27 and shall thereafter be binding on a franchisee and the City.

1                   Section 54. That Sections 1 through 53 hereof be codified in the Lincoln Municipal  
2 Code as Chapter 5.15, Cable Communications.

3                   Section 55. That Chapter 5.16 of the Lincoln Municipal Code be and the same is  
4 hereby repealed in its entirety.

5                   Section 56. Pursuant to Article VII, Section 7 of the City Charter, this ordinance  
6 shall be posted on the official bulletin board of the City in lieu of and in place of newspaper  
7 publication with notice of passage and such posting to be given by publication one time in the  
8 official newspaper by the City Clerk. This ordinance shall take effect and be in force from and after  
9 its passage and publication as herein and in the City Charter provided. That this ordinance shall take  
10 effect and be in force from and after its passage and publication according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
Assistant City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2005:

\_\_\_\_\_  
Mayor